



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Inventors : Gregory A. Sims
Serial No. : 09/800,153
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PREVENTION SYSTEM
Group : 4533
Examiner : C. S. Kim
Docket No. : MCY 001 P2

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BRIEF ON APPEAL

This is an Appeal under 37 C.F.R. §1.192 to the Board of Patent Appeals and Interferences of the U.S. Patent and Trademark Office from the final rejection of claims 1 - 5 and 7 - 12 of the above-identified patent application. The claims were indicated as finally rejected in an Office Action dated December 24, 2003. Three copies of this Brief are filed herewith, together with the \$165.00 fee required under 37 C.F.R. §1.17(f). Also, please provide any extension of time which may be necessary and charge any fees which may be due to Deposit Account No. 50-1287, but not to include any payment of Issue Fees. (Should Deposit Account No. 50-01287 be deficient, please charge any further deficiencies to Deposit Account No. 10-0220).

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1. **Real Party and Interest**

Advanced Pest Control Systems, Inc. is the current Assignee of this patent application and the real party of interest.

2. **Related Appeals and Interferences**

There are no other appeals or interferences known to Applicant, the Applicant's legal representative, or Assignee which will directly affect or be directly affected by or have a bearing on the Board's decision on the pending Appeal.

3. **Status of Claims**

Claims 1 - 5 and 7 - 24 are pending in the application.

Claims 13 - 24 are withdrawn from consideration.

Claim 1 is the only independent claim and claims 2 – 5 and 7 – 12 are dependent claims. Claims 1 – 5 and 7 – 12 are rejected and are being appealed.

Applicant is attaching as Appendix A a listing of the claims as currently pending.

4. **Status of Amendments**

Applicant filed an amendment on July 11, 2003. In an Office Action of December 24, 2003, the Examiner entered the July 11, 2003 amendments, but maintained his rejections based on new grounds of rejection. Those rejections are being appealed.

An Amendment After Final Rejection was filed on March 10, 2004 to place the claims in good form for appeal. The amendment sought to correct the misspelling of the word "last" to "least" (claims 1 and 20), and to add the word "and" at the end of the

penultimate paragraph. The Amendment After Final also sought to correct the antecedent basis of the reference to the language "at last one wall" to --at least one of said interior walls-- because the antecedent language "interior walls" is set forth in the preamble. The Examiner did NOT enter the Amendment After Final because he believed the amendments raised new issues.

5. Summary of the Invention

The present invention relates to a built-in pest control system wherein pesticides can be distributed and released into the walls of a building by means of pre-built distribution system. An injection port 9 is provided in at least one of the walls. The port is connected to a downstream manifold which directs the pesticides into various portions of the building through a plurality of lines that are situated in the walls.

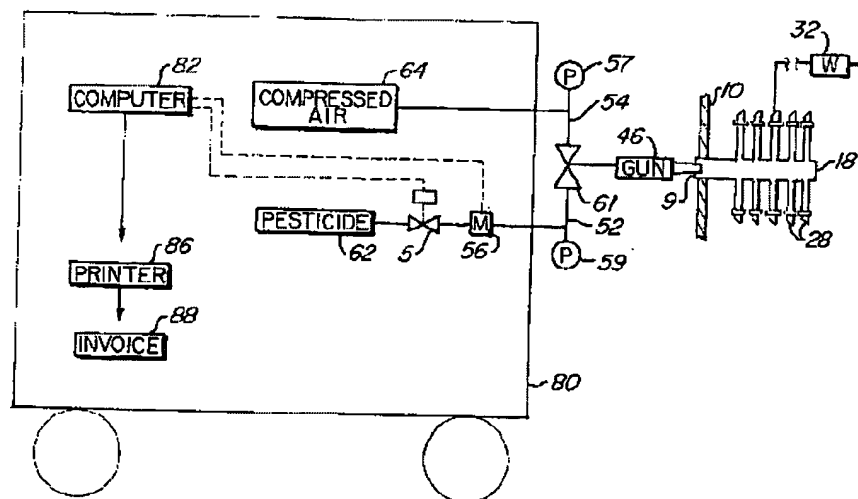


FIG.—1

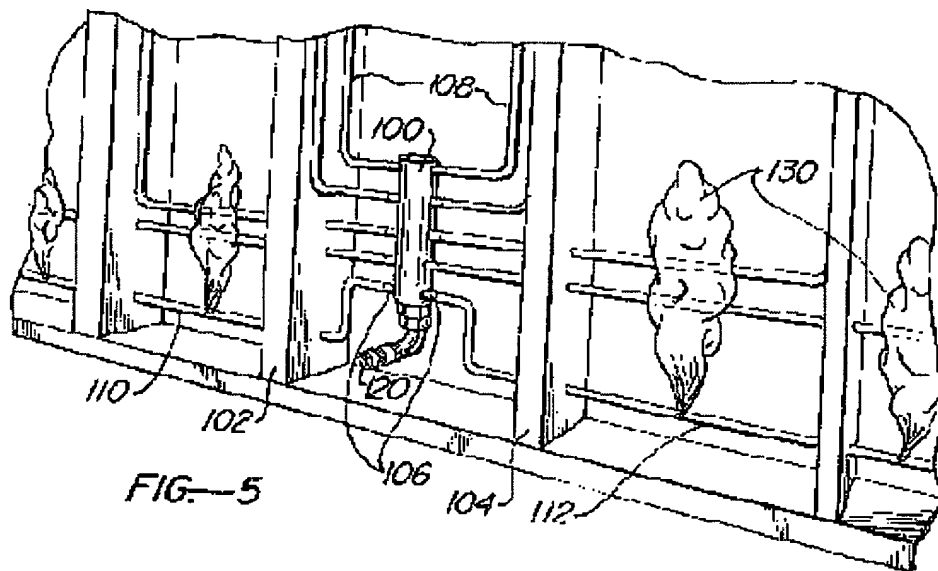


Fig. 1 illustrates an embodiment of the invention wherein a source of pesticide and a source of gas are provided. In this embodiment, the sources (62, 64) of pesticide and gas are connected to an injection device or gun. The sources may be provided on a vehicle, such as a truck or a smaller cart, that can be wheeled closer to the injection port. As recited in the independent claim 1, the port is located on an exterior wall of a building.

A manifold 18 (Fig. 1) or 100 (Fig. 5) is shown mounted in the wall between wall studs, such as studs 102 and 104 in the embodiment shown in Fig. 5. The manifolds 18 and 100 comprise a plurality of outlets or nipples 26 which are coupled to flexible conduits or tubes attached to the nipples and which direct the pesticides and compressed air or gas to various portions of the building. An example of the tubing attachment is shown in Fig. 4.

The distribution manifold 18 is connected downstream of the port 20 and comprises an inlet and a plurality of outlets as shown and claimed in claim 1. A plurality of conduits or tubes, such as tube 34 (Fig. 3), is coupled to the outlets or nipples 26, respectively. The tubes 34 comprise a plurality of fluid discharge openings 38 to permit pesticide to be delivered into at least one wall. Some of the conduits or tubes 34 may be non-perforated feeder lines, such as feeder lines 108 in Fig. 5, which extend into the various parts of the building for delivering pesticide into such parts.

During operation, a technician positions his or her cart or truck 80 (Fig. 2) as close as possible to the portion of the building where the injection port 9 (Fig. 1) is located.

If the injection materials are mounted on a wheeled cart, the technician brings the cart into the vicinity of the injection port 9. The computer 82 on the truck 80 is activated, as is the air compressor and, if applicable, the demand pump for the pesticide. Next, the cover 14 (Fig. 6) is raised to expose the injection port 9.

A nozzle 50 of the injection device or service gun 46 (Fig. 3) is then placed in the injection port 9 until a seal is obtained between the nozzle 50 and an O-ring 19 in the injection port 9. If desired, the technician may wish to test the lines for integrity by blowing a gas, such as compressed air, from the compressed air source 64 (Fig. 1) through the system to ensure that air is reaching the desired portions of the building.

Next, the valve handle 70 (Fig. 3) on the injection device or gun 46 is set and the trigger 72 on the gun 46 is squeezed to cause liquid pesticide from the pesticide source 62 (Fig. 1) to pass into the system. When sufficient pesticide has been fed to the system, which can be monitored by pressure gauge 59 (Fig. 1), the trigger 72 is released and the valve handle 70 is then switched to the compressed air setting. When the trigger 72 is squeezed, the compressed air from the compressed air source 64 is injected and blows the liquid or pesticide through tubing 34 and out through the perforations 38 (Fig. 3). This creates a mist that is similar to a high-pressure water misting system and that is illustrated by the mist 130 shown in Fig. 5.

In one embodiment, a whistle 40 (Fig. 4) is provided downstream of the manifold 18 so that that when the compressed air has forced the pesticide through the tubing 34 and out the perforations 38, an audible whistle or sound is created to let the technician know that the pesticide has been dispensed therefrom.

6. Issues

The issue in this Brief on Appeal is whether claims 1 – 5 and 7 - 12 were properly rejected under 35 U.S.C. §103(a) as being unpatentable over Jackson (U.S. 4,800,672) in view of Wing (U.S. 2,862,765) or combinations of them with other references.

A second issue is the Examiner's refusal to correct the misspelling of the word "last" to "least" in claim 1.

7. **Grouping of Claims**

Claims 1 – 4 are grouped together and stand or fall together, but dependent claims 5 and 7 - 12 are not grouped and do not stand or fall together or with grouped claims 1 – 4 for purposes of this Appeal.

Independent claim 1 recites:

1. A system for distributing pesticide into interior walls of a building comprising:
 - a port mounted in an exterior wall of the building, said port being adapted to receive a discharge portion of a fluid injection device wherein the injection device includes an inert gas inlet, a pesticide inlet, and valve means for selectively providing inert gas and pesticide to the discharge portion,
 - a distribution manifold connected downstream of the port having an inlet portion and a plurality of outlets,
 - a plurality of elongate tubing members connected to the outlets, each tubing member extending through at last [sic] one wall of the building and having fluid discharge openings spaced along said tubing members.

Dependent claim 5 recites the added limitation of wherein only one single port is mounted in the exterior wall of the building. The applied references do not show the overall recitations of this claim in combination with base claim 1, nor do the other appealed claims show the overall recitations of this claim. Therefore, claim 5 is patentable separately from the other appealed claims.

Dependent claim 7 recites the added limitation of the outlets are nipples adapted to receive end portions of flexible elongate tubing members. The applied references do not show the overall recitations of this claim in combination with base claim 1, nor do the other

appealed claims show the overall recitations of this claim. Therefore, claim 7 is patentable separately from the other appealed claims.

Dependent claim 8 recites the added limitation of the discharge portion of the fluid injection device is adapted to sealably mount to the port. The applied references do not show the overall recitations of this claim in combination with base claim 1, nor do the other appealed claims show the overall recitations of this claim. Therefore, claim 8 is patentable separately from the other appealed claims.

Dependent claim 9 recites the added limitation of including a wheeled vehicle, a source of pressurized inert gas and a source of pesticide separately mounted on the vehicle, and conduits from the sources to the fluid injection device for providing pressurized inert gas and pesticide to said device. The applied references do not show the overall recitations of this claim in combination with base claim 1, nor do the other appealed claims show the overall recitations of this claim. Therefore, claim 9 is patentable separately from the other appealed claims.

Dependent claim 10 recites the added limitation of flow-measuring means for determining the amount of pesticide distributed into the building, and recording means for providing a printed record of the amount of pesticide distributed into the building. The applied references do not show the overall recitations of this claim in combination with base claim 1, nor do the other appealed claims show the overall recitations of this claim. Therefore, claim 10 is patentable separately from the other appealed claims.

Dependent claim 11 depends from claim 10 and recites that the recording means is mounted on the vehicle. The applied references do not show the overall recitations of this claim in combination with base claim 1, nor do the other appealed claims show the overall recitations of this claim. Therefore, claim 11 is patentable separately from the other appealed claims.

Dependent claim 12 recites the added limitation of the tubing members also include audible signal means for producing an audible signal when inert gas flows through the tubing members. The applied references do not show the overall recitations of this claim in combination with base claim 1, nor do the other appealed claims show the overall recitations of this claim. Therefore, claim 12 is patentable separately from the other appealed claims.

8. **Argument**

I. **CLAIMS 1 – 5 AND 7 – 12 ARE NOT UNPATENTABLE UNDER 35 U.S.C. §103(a) OVER JACKSON IN VIEW OF WING (WHETHER TAKEN ALONE, IN COMBINATION, OR IN COMBINATION WITH OTHER REFERENCES).**

Applicant's claim 1 recites:

1. A system for distributing pesticide into interior walls of a building comprising:
 - a port mounted in an exterior wall of the building, said port being adapted to receive a discharge portion of a fluid injection device wherein the injection device includes an inert gas inlet, a pesticide inlet, and valve means for selectively providing inert gas and pesticide to the discharge portion,
 - a distribution manifold connected downstream of the port having an inlet portion and a plurality of outlets,
 - a plurality of elongate tubing members connected to the outlets, each tubing member extending through at last [sic] one wall of the building and having fluid discharge openings spaced along said tubing members. (emphasis added)

- (i) Jackson and Wing fail to teach of either a port to receive a discharge portion of an injection device or of a fluid injection device for selective switching between gas and pesticide sources.

Applicant respectfully submits that the Jackson reference fails to teach of the use of the fluid injection device claimed in claim 1, wherein the injection device comprises a gas inlet, a pesticide inlet and valve means for selectively providing gas and pesticide to the discharge portion of the injection device which is inserted or received in the port. Indeed, Jackson does not even use a gas and appears to only teach of injecting a pesticide in the tubing. There is no teaching in Jackson suggesting the use of gas and no teaching of an injection device having valve means for selectively switching between gas and pesticide.

Wing does not use a port at all, but rather, a fixed coupling between tanks 14 and 15 and fitting 19. Wing does not teach of selectively switching between gas and pesticide. The Wing system appears to cause a gas to be injected into the pesticide tank 14 and mixed with the pesticide. Neither reference shows an injection device having valve means for selectively providing gas and pesticide and for inserting into a port.

A feature of Applicant's invention as covered in claim 1 is that the technician can inject a pesticide into the tubing having the openings and, thereafter, using the same injection device to selectively switch to a gas setting in order to inject the gas into the tubing 34. The gas facilitates forcing the pesticide out of the tubing 34 and apertures 38 and into the walls to ensure that all pesticide has been distributed into the walls, such as the interior walls of the building. The technician then removes the injection device and moves to the next port and repeats the procedure.

Wing and Jackson appear to contemplate use of a permanent or semi-permanent pesticide source to minimize the number of trips a technician has to make to visit the building. For example, Jackson states, at Column 4, lines 18 – 24:

If the source of fumigant (67), which is the connection means (63), is a container that has sufficient capacity, it will only need

to be replaced or refilled once every six (6) months or so by the pest control service man at a minimal cost to the property owner.

The Jackson system appears to be a closed-source, gravity-fed system wherein the tubes of Jackson are permanently, or at least for a period of six months, coupled to the port 63 (Fig. 1) and the container. Again, there is no provision in Jackson for a port capable of receiving a discharge portion of an injection device capable of inserting into a port or for selectively switching between pesticide and gas sources.

In contrast, Applicant's claim 1 contemplates the use of a port adapted to receive a discharge end of the injection device. The claim 1 also requires that the injection device comprises valve means for selectively providing gas and pesticide to the discharge portion of the injection device and, ultimately, into the tubing 34 and out of apertures 38. Recall that Applicant's claim 1 recites valve means which enables the technician to inject pesticide into the tubing 34 and then selectively switch to gas so that gas may be injected into the tubing 34, which facilitates injecting the pesticide into a wall. Thus, Jackson fails to provide the technician with an injection device having said discharge portion and the ability to switch between pesticide and gas sources.

As to the proposed combination of Jackson and Wing, Applicant respectfully submits that there is no incentive or suggestion that the indoor pesticide system of Jackson be combined with the outdoor fumigating device of Wing. Note that Jackson is an interior pesticide system for use inside the walls of a building, whereas Wing is an exterior structure for fumigating an exterior area outside of the walls and outside of the building. The Examiner has failed to provide any showing or basis as to the motivation or teaching for combining these references, as required by a myriad of authority. E.g., In Re Sang-Su Lee, 227 F.3d 1338, 1343 (Fed. Cir. 2002); In Re Fine, 837 F.2d 1071, 1075 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) (" 'teachings of references can be combined only if there is some suggestion or incentive to do so.' ") (emphasis in original).

Even if it were obvious to combine the references, which Applicant believes it is not, the resulting combination still fails to teach of the rejected claims. At Column 4, lines 39 – 52, Wing states:

In operation, it will be seen that when the valve 34 is closed and valve 22 opened, the high pressure carbon dioxide gas is introduced into the insecticide container 14. Upon the opening of the valve 33 the insecticide is forced through the fitting 29 and into the emulsifying housing 26. The valve 33 is then closed and the valve 34 opened so as to force the insecticide into the housing 26 and through the discharge tubing 40. The supply of the emulsified insecticide as it discharges from the housing 26 into the tubing 40 and the branch tubing 42 and 43, is controlled by the valves 44 which preferably are alternately operated, so as to fog one-half of the building at a time rather than by a continuous operation, since this method of procedure has been found more economical and faster than operating a long single or continuous line, such as shown in Figure 5. The spaced bronze screening 37 and 41 in the housing 26 prevents the cotton fibers 38 from entering the tubing 40 and the branch connections 42 and 43 with the insecticide emulsion. (emphasis added)

Note that Wing discloses the use of a fixed tank in the interior of a building 11 (Fig. 2) such that the pesticide may be applied outside the building. Also, the Wing device does not provide an injection device adapted to be received in the port and having valve means for selectively providing gas and pesticide to either a port or tubing as claimed by Applicant. In this regard, note Fig. 5 of Wing, which shows a fitting 29 that couples the tanks to the housing 26 and tubing 40. In Wing, the valve 34 is closed and valve 22 is opened to cause gas to flow into the pesticide tank 14 to apparently provide a mixture of gas and pesticide. Wing does not provide an injection device having valve means for selectively introducing either gas and pesticide into tubing as claimed in Applicant's claim 1.

Further, if Wing is combined with Jackson as the Examiner proposes, there is no teaching of an injection device that enables a technician or user to selectively switch from a pesticide to a gas such that the pesticide and gas may be received in the port through the discharge portion of the fluid injection device. In fact, it appears that the Wing reference

actually teaches away from such a device. Note that the valve means 33 and 34, which the Examiner relies on in paragraph 5 of the final Office Action of December 24, 2003, are not provided in an injection device, but rather, are separate from each other. Wing requires two valves 33 and 34, and neither of the Wing devices 33 and 34 comprises a gas inlet, a pesticide inlet and valve means for selectively providing gas and pesticide to the discharge portion of an injection device.

For at least the foregoing reasons, it is not obvious to combine Wing with Jackson. Jackson and Wing (when taken alone or in combination) either fail to teach of the invention as claimed in the rejected claims or actually teach away from it.

- (ii) The references or combinations thereof fail to teach of tubing members having spaced apertures and extending through at least one wall of the building in combination with the other elements of claim 1.

Jackson and the combination of Jackson and Wing fail to teach of any tubing member extending through at least one wall of the building and having fluid discharge openings spaced along the tubing members unlike the claimed system of Applicant's claim 1. Note that both the Jackson and Wing devices appear to require foggers at the end of the tubing. In Jackson, it appears that pesticide is simply pumped from a tank until a mist is emitted through foggers 53 at the end of the lines, as illustrated in Fig. 1 of Jackson. There are no openings in the tubing along the way to the foggers 53.

Wing appears to require that the tubing extend outside the walls and even outside the building so it can fumigate the areas surrounding the building. Neither Johnson nor Wing suggests the use of spaced openings in the tubing through which pesticide and compressed air may pass into the walls. Accordingly, there would be no motivation for destroying the use or need for the foggers of the cited references by providing multiple openings in the tubes as claimed in Applicant's rejected claims.

Moreover, assuming arguendo that it were obvious to combine the references, which Applicant believes it is not, the combination would seem to result in either tubing which terminates in foggers in the walls, which Jackson may already suggest, or tubing having foggers that terminate outside the building, which Wing already suggests. Neither would teach of Applicant's claim 1 limitation of tubing having a plurality of spaced openings for distributing the pesticide and gas into at least one wall.

For all the foregoing reasons, the Jackson and Wing references, whether taken alone or in combination, fail to teach of Applicant's claim 1, and there is either no motivation to combine these references or the combination of these references fails to teach of the features of Applicant's claim 1.

(iii) The dependent claims 2 – 5 and 7 - 12.

Applicant's claims 2 – 5 and 7 - 12 recite limitations in addition to the limitations of base claim 1, and accordingly, Applicant believes that these claims are also allowable for the reasons set forth earlier herein and also for the following reasons.

Regarding claims 3 and 4, the Examiner simply stated that it would be obvious to have provided additional outlets of the device of Jackson in view of Wing for utilization in large buildings and/or provide additional distribution zones. However, for the reasons mentioned earlier in Section 8(I)(ii) of this Appeal Brief, Applicant respectfully submits that Jackson and Wing, when viewed alone or in combination, fail to teach of the limitations of claims 3 and 4.

Regarding the Examiner's rejection of claim 9, Applicant submits that it would not be obvious to combine or modify Jackson with Wing, and then combine these references with the device of Hill (U.S. 2,246,731) for the reasons mentioned earlier relative to the combination of Jackson and Wing and also for the following reasons.

As mentioned earlier, Wing and Jackson contemplate use of a permanent or semi-permanent pesticide source to minimize the number of trips a technician has to make to visit the building. Jackson states, at Column 4, lines 18 – 24:

If the source of fumigant (67), which is the connection means (63), is a container that has sufficient capacity, it will only need to be replaced or refilled once every six (6) months or so by the pest control service man at a minimal cost to the property owner.

This seems to actually teach away from Applicant's invention claimed in claim 9, which recites:

9. The system of Claim 1 also including a wheeled vehicle, a source of pressurized inert gas and a source of pesticide separately mounted on the vehicle, and conduits from the sources to the fluid injection

device for providing pressurized inert gas and pesticide to said device. (emphasis added)

Wing teaches that the Wing source tanks 14 and 15 be stored inside the building, not located on a wheeled vehicle. Wing suggests that the tanks 14 and 15 be permanently or semi-permanently stored inside the building. Thus, there is no reason to provide mobility to the devices of Wing and/or Jackson, and consequently, there is no motivation to combine the device of Hill with either Jackson or Wing. It appears that the Examiner is using hindsight and/or the teaching of Applicant's disclosure to combine the three references and such use is not permissible. For the foregoing reasons and for the reasons mentioned earlier relative to the rejection of claim 1, Applicant respectfully submits that claim 9 is patentable over the cited references when taken alone or in combination.

Regarding dependent claim 10, the Examiner conceded that Jackson does not disclose recording means, but then combined the Cann reference (U.S. 5,310,114) with Jackson and Wing and suggested that this combination would be obvious to a skilled artisan to provide a printout of flow characteristics. Applicant traverses and appeals the Examiner's rejection for the reasons stated earlier relative to claim 1 and also for the following reasons.

Applicant can find no teaching in Jackson, Wing or Cann that suggests that the paint measuring device of Cann be used in the pesticide delivery systems of either Jackson or Wing. The Cann reference appears to be non-analogous art because it is from a different field of endeavor and the skilled artisan would not look to Cann for a paint measuring device solution because the need or problem for a paint measuring device does not exist in Jackson or Wing.

There would seem to be no motivation to combine the paint measurement device of Cann with Jackson or Wing because Jackson and Wing appear to contemplate the use of containers of pesticide that are used until exhausted either manually or on a timer (e.g., Jackson at Column 3, lines 2 - 6). There would seem to be no need to measure the amount of usage and no need to modify these devices with either a recording or measuring device. Thus, a skilled artisan would not look to Cann because there is no measurement requirement suggested in Jackson or Wing. Accordingly, there is no motivation to combine

the references, and the combination either destroys the teaching of Jackson, Wing or Cann or does not teach of the invention claimed in Applicant's claim 10.

In addition, Applicant's dependent claim 10 requires both a measuring means and recording means, neither of which are shown by Cann or the proposed combination of Cann with the other references. Therefore, even if Cann is combined, the combination fails to teach of the limitations set forth in claim 1 and/or claim 10.

For all the foregoing reasons, the proposed combination is not proper because it is based on non-analogous art, there is no motivation to combine the references because such combination is based on Applicant's disclosure, or such combination would destroy the teaching of the references. Assuming, arguendo, it is proper to combine the references, the resulting combination fails to teach of the claimed invention. Accordingly, claim 10 should be allowed.

Regarding dependent claim 11, which depends from claim 10, the Examiner combined four references: Jackson, Wing, Cann (U.S. 5,310,114), and Hill (U.S. 2,246,731). The Examiner concluded that it would be obvious to provide a wheeled vehicle to the device of Jackson in view of Wing and Cann as taught by yet a fourth reference, Hill, for mobility. This rejection is traversed for the reasons mentioned earlier relative to the rejections of claims 1, 9 and 10 and for the following reasons.

As mentioned earlier, Jackson and Wing show no motivation or need to provide mobility, and Wing actually appears to teach away from providing a portable or wheeled delivery system. Both references seem to contemplate the use of fixed, on-site, permanent or semi-permanent (such as tanks 14 and 15 in Wing) to provide a closed system where the source of gas or pesticide is resident at the building for a period of time. Even if there was a motivation to combine the references, the resultant combination still fails to teach of the combination of Applicant's claim 1, on a vehicle as required by claim 11, and comprising both measuring means and recording means as required by claim 10.

Finally, Cann is from a completely different field of endeavor and does not overcome any problem suggested by Jackson, Wing or Hill. It is non-analogous art and there appears to be no motivation to combine Cann with the other references or to look to Cann to overcome any problem in Jackson, Wing or Hill (when viewed alone or in combination).

Accordingly, for these reasons and for the reasons stated earlier herein, Applicant respectfully submits that the claim 11 is not obvious in view of the cited references and should be allowed.

Dependent claim 12 was rejected under a combination of Jackson and Wing as applied to claim 1 and further in view of Konieczynski (U.S. 5,310,114). The Examiner conceded that combination of Jackson and Wing does not disclose an audible alarm, but the Examiner further stated that it would be obvious to combine the alarm 56 of Konieczynski to provide an audible signal means to the pressure gauge of Jackson to provide an audible alarm.

Konieczynski is also non-analogous art relating to a sprayer for spraying a viscous coating material, such as wax, onto a surface. Konieczynski is from a completely different field of endeavor, and a skilled artisan would not be motivated to look to Konieczynski for a solution for an audible signal because Jackson and Wing do not suggest the need for such a signal. Thus, there is no motivation to look to this art absent hindsight based on Applicant's teaching, and the Examiner has not provided any sound factual basis for such combination.

Further, the resulting proposed combination fails to teach of the limitations of claims 1 and 12. Note that the Konieczynski spring apparatus appears to provide an alarm only when the pressure in the fixture increases until the increasing is sensed by a pressure switch which activates an alarm when the pressure exceeds a predetermined level. If the Konieczynski switch were provided in the system of Jackson as the Examiner suggests, it would seem to sound an audible alarm only when the pressure in the Jackson system exceeds some predetermined pressure, presumably when the nozzles 53 (Fig. 1 of Jackson) become clogged. This would seem to eliminate the need for the pressure gauges 54a, 54b and 54c used in the Jackson device as modified by Konieczynski, as Applicant understands the Examiner's proposed combination.

In contrast, Applicant's claim 12 recites that the tubing members include an audible signal for producing an audible signal when gas flows through the tubing members, not necessarily when the pressure increases as required by Konieczynski. Again, Applicant's invention is intended to facilitate the distribution of pesticides into walls of a building. After the technician has inserted the pesticide using the injection device, he selectively moves lever 70 (Fig. 3) to the gas setting, which permits flow of air or other gas into the tubing of

Applicant's device. The whistle 40 sounds when the air or gas passes the whistle, thereby providing the technician with an audible sound to let him or her know that the air has forced the pesticide through the tubing. Therefore, even if it were obvious to combine the references as the Examiner suggested, they fail to teach of claim 12, and they further fail to teach of the base limitations of claim 1 for the reasons mentioned earlier herein relative to the Examiner's rejection of claim 1.

For all the foregoing reasons, the proposed combination is not proper because it is based on non-analogous art. There is no motivation to combine the references because such combination is based on Applicant's disclosure or such combination would destroy the teaching of the references. Assuming, arguendo, it is proper to combine the references, the resulting combination fails to teach of the claimed invention. Accordingly, the Examiner's rejection of claim 12 should be reversed.

II. THE CLERICAL ERROR

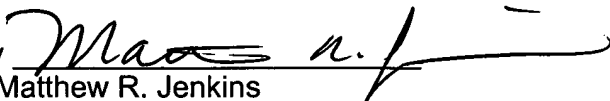
Applicant's Amendment After Final Rejection attempted to correct the misspelling of the "last" to "least." Applicant respectfully requests that the Board direct the Examiner to enter the correction of the misspelling of the word "last" to "least" in claim 1. If the Board wishes, Applicant will submit a further amendment to correct this error, if the Board will kindly direct the Examiner to permit the correction.

9. **Conclusion**

For all the foregoing reasons, Applicant respectfully requests that the Board reverse the Examiner's rejections of claims 1 – 5 and 7 - 12 and that the Board permit the correction of the clerical error.

Respectfully submitted,

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April 29, 2004

APPENDIX A

Listing of Claims:

1. A system for distributing pesticide into interior walls of a building comprising
a port mounted in an exterior wall of the building, said port being adapted to receive
a discharge portion of a fluid injection device wherein the injection device includes an inert
gas inlet, a pesticide inlet, and valve means for selectively providing inert gas and pesticide
to the discharge portion,
a distribution manifold connected downstream of the port having an inlet portion and
a plurality of outlets,
a plurality of elongate tubing members connected to the outlets, each tubing member
extending through at least one wall of the building and having fluid discharge openings
spaced along said tubing members.
2. The system of Claim 1 wherein the manifold has at least four outlets.
3. The system of Claim 1 wherein the manifold has at least six outlets.
4. The system of Claim 1 wherein the manifold has at least eight outlets.
5. The system of Claim 1 wherein only one single port is mounted in the exterior wall of
the building.
6. (cancelled)
7. The system of Claim 1 wherein the outlets are nipples adapted to receive end
portions of flexible elongate tubing members.
8. The system of Claim 1 wherein the discharge portion of the fluid injection device is
adapted to sealably mount to the port.

9. The system of Claim 1 also including a wheeled vehicle, a source of pressurized inert gas and a source of pesticide separately mounted on the vehicle, and conduits from the sources to the fluid injection device for providing pressurized inert gas and pesticide to said device.

10. The system of Claim 1 also comprises flow-measuring means for determining the amount of pesticide distributed into the building, and recording means for providing a printed record of the amount of pesticide distributed into the building.

11. The system of Claim 10 wherein the recording means is mounted on the vehicle.

12. The system of Claim 1 wherein the tubing members also include audible signal means for producing an audible signal when inert gas flows through the tubing members.

13. (withdrawn) In a system for distributing pesticide into interior walls of a building wherein a plurality of elongate distribution conduits are disposed within walls of the building, the improvement therein which comprises audible signal means mounted in at least one of the conduits for producing an audible sound when inert gas flows through said conduit.

14. (withdrawn) The system of Claim 13 wherein the audible sound is a whistle.

15. (withdrawn) The system of Claim 13 wherein the audible signal means is mounted at downstream portions of a plurality of conduits.

16. (withdrawn) A method of distributing pesticide into walls of a building containing a port mounted in an exterior building wall in fluid communication with a plurality of elongate tubing members extending through interior building walls comprising

locating a wheeled vehicle in the vicinity of the port, said vehicle having a source of pressurized inert gas and a source of pesticide mounted thereon, and having conduit means extending from the sources to a fluid injection device,

sealably mounting the fluid injection device in the port,

injecting pesticide into the tubing members,

thereafter injecting pressurized inert gas into the tubing members to force pesticide out through orifices in the tubing members,

measuring the amount of pesticide injected through the port,

sending information with respect to the amount of pesticide injected through the port to a processor located on the vehicle, said processor printing a written record of the amount of pesticide injected through the port.

17. (withdrawn) A system for distributing pesticide into interior walls of a building comprising

a wheeled vehicle,

a source of pressurized inert gas and a source of pesticide mounted separately on the vehicle,

a fluid injection device having a discharge nozzle adapted to sealably engage a port in a building wall,

conduits connecting each source to the injection device,

flow measuring means for detecting the amount of pesticide passing through the fluid injection device,

data processing and printing means, electrically connected to the flow measuring means, mounted on the vehicle for calculating and recording the amount of pesticide distributed through the fluid injection device.

18. (withdrawn) The system of claim 17 also comprising a port mounted in the building wall, a manifold connected downstream of the port having an inlet portion and a plurality of outlets.

19. (withdrawn) The system of Claim 17 wherein the manifold has at least six outlets.

20. (Withdrawn) A system for distributing pesticide into interior walls of a building comprising

a port mounted in an exterior wall of the building, said port being adapted to receive a discharge portion of a fluid injection device,

a distribution manifold connected downstream of the port having an inlet portion and a plurality of outlets,

a plurality of elongate tubing members connected to the outlets, each tubing member extending through at least one wall of the building and having fluid discharge openings spaced along said tubing members, and

flow measuring means for determining the amount of pesticide distributed into the building, and

recording means for providing a printed record of the amount of pesticide distributed into the building.

21. (Withdrawn) The system of Claim 20 wherein the injection device includes an inert gas inlet, a pesticide inlet, and valve means for selectively providing inert gas and pesticide to the discharge portion.

22. (Withdrawn) The system of Claim 20 also including a wheeled vehicle, a source of pressurized inert gas and a source of pesticide separately mounted on the vehicle, and conduits from the sources to the fluid injection device for providing pressurized inert gas and pesticide to said device.

23. (Withdrawn) The system of Claim 20 wherein the recording means is mounted on the vehicle.

24. (Withdrawn) The system of Claim 20 wherein the tubing members also include audible signal means for producing an audible signal when inert gas flows through the tubing members.